United States Department of Labor
Employees' Compensation Appeals Board

P.G., Appellant	)	
and	)	**Docket No. 22-0599**
	)	**Issued: October 19, 2022**
U.S. POSTAL SERVICE, KANSAS CITY MAIN POST OFFICE, Kansas City, MO, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On March 14, 2022 appellant filed a timely appeal from a January 11, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted September 6, 2021 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the January 11, 2022 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On September 8, 2021 appellant, then a 51-year-old mail handler technician, filed a traumatic injury claim (Form CA-1) alleging that on September 6, 2021 she sustained a right shoulder strain when she reached into a box to remove heavy mail trays and used her left arm to pull the trays up the side of the box while in the performance of duty. She did not stop work, but began working in a modified-duty position.

In an authorization for examination and/or treatment (Form CA-16) dated September 6, 2021, Brian E. Thompson, a family nurse practitioner, indicated that appellant reported having right shoulder pain after reaching and pulling mail trays. He diagnosed right shoulder strain and checked a box marked "Yes" to indicate that the diagnosed condition was caused or aggravated by the reported employment activity. In separate reports of even date, Mr. Thompson noted appellant's complaints and indicated that she had limited use of her right arm. He diagnosed strain of unspecified muscle, fascia, and tendon at the right shoulder/upper arm.

In a September 27, 2021 report, Dr. Walter Porter, a Board-certified emergency medicine physician, indicated that appellant reported injuring her right shoulder and neck at work on September 6, 2021 due to pulling mail trays. He noted that, upon physical examination of the right shoulder, appellant exhibited full range of motion and tenderness in the anterior of the shoulder. Dr. Porter diagnosed right shoulder injury and recommended physical therapy.

In an October 4, 2021 report, Dr. Nancy Moran, a Board-certified family medicine physician, identified the date of injury as September 6, 2021 and noted that appellant presented with right shoulder pain. She reported physical examination findings, noting that appellant had full range of motion of her right shoulder, and diagnosed right shoulder injury. In a report of even date, Dr. Moran advised that appellant could return to modified work on a full-time basis. On October 8, 2021 she indicated that a magnetic resonance imaging (MRI) scan of the right shoulder showed possible tears of the infraspinatus/supraspinatus tendons. Dr. Moran continued to diagnose right shoulder injury. On October 12, 2021 she reported that appellant could return to full-duty work.

In a November 23, 2021 report, Dr. Prem Parmar, a Board-certified orthopedic surgeon, noted that appellant reported injuring her right shoulder by pulling heavy mail trays at work on September 6, 2021. Appellant also reported that for 27 years at the employing establishment she had "done a lot" of repetitive reaching, pulling, lifting, and pushing. Dr. Parmar advised that the physical examination revealed full range of motion of both shoulders with some discomfort above the horizon on the right. The impingement test was minimally positive in the right shoulder. Dr. Parmar diagnosed right shoulder impingement-type symptoms and a partial-thickness tear of the right rotator cuff. He indicated, "I believe the prevailing factor for these issues is her work-related injury as well as her repetitive job activities at the postal service for the past over 2-1/2 decades." Dr. Parmar recommended continued physical therapy and medication.

In a December 8, 2021 development letter, OWCP informed appellant of the deficiencies of her claim.[3] It advised her of the type of evidence needed and provided a questionnaire for her completion. OWCP afforded her 30 days to respond.

Appellant submitted a December 7, 2021 report in which Dr. Parmar indicated that her right shoulder condition was slowly improving. In reports dated November 23, December 7, 2021, and January 4, 2022, Rita C. Calderon[4] discussed appellant's right shoulder condition and her medical treatment plans.

By decision dated January 11, 2022, OWCP accepted that the September 6, 2021 employment incident occurred as alleged. However, it denied her claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6] To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[8]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.[9]

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[3] OWCP indicated that appellant's claim had been administratively approved for a limited amount of medical expenses but that the merits of the claim had not been formally considered.

[4] Ms. Calderon's credentials are not found in the case record.

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.,* 59 ECAB 427 (2008); *James E. Chadden, Sr.,* 40 ECAB 312 (1988).

[6] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett,* 41 ECAB 992 (1990).

[7] *B.P.,* Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *M.H.,* Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *S.S.,* Docket No. 18-1488 (issued March 11, 2019).

Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10]

ANALYSIS

The Board finds that appellant has appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted September 6, 2021 employment incident.

Appellant submitted a November 23, 2021 report from Dr. Parmar who noted that appellant reported injuring her right shoulder by pulling heavy mail trays at work on September 6, 2021. Dr. Parmar indicated that appellant had also reported that for 27 years at the employing establishment she had "done a lot" of repetitive reaching, pulling, lifting, and pushing. He diagnosed right shoulder impingement-type symptoms and a partial-thickness tear of the right rotator cuff. Dr. Parmar indicated, "I believe the prevailing factor for these issues is her work-related injury as well as her repetitive job activities at the postal service for the past over 2-1/2 decades." The Board finds that this evidence establishes a diagnosis of a partial-thickness tear of the right rotator cuff in connection with the accepted September 6, 2021 employment incident.

The Board further finds, however, that this case is not in posture for decision with regard to whether the diagnosed medical condition is causally related to the accepted September 6, 2021 employment incident. As the medical evidence of record establishes a diagnosed medical condition, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship.[11] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted September 6, 2021 employment incident. The Board further finds, however that this case is not in posture for decision with regard to whether the diagnosed medical condition is causally related to the accepted September 6, 2021 employment incident.

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[10] *J.L.,* Docket No. 18-1804 (issued April 12, 2019).

[11] *See V.S.,* Docket No. 22-0105 (issued July 18, 2022); *F.D.*, 21-1045 (issued December 22, 2021).

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.[12]

Issued: October 19, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

[12] A properly completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.,* Docket No. 18-0737 (issued November 2, 2018); *N.M.,* Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane,* 54 ECAB 608 (2003).